HIGH COURT OF CHHATTISGARH : BILASPUR

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Division Bench : Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

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Criminal Appeal No.1070 of 2001

Ram Kumar & Others

Versus

State of Chhattisgarh

Judgment for consideration

Sd/-
Judge
23-08-2007

Hon'ble Shri Justice Sunil Kumar Sinha

Sd/-
Sunil Kumar Sinha
Judge

Post for Judgment on 27th 08-2007

Sd/-
L.C. Bhadoo
Judge

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**HIGH COURT OF CHHATTISGARH : BILASPUR**

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**Division Bench : Hon'ble Shri L.C. Bhadoo &**
**Hon'ble Shri Sunil Kumar Sinha, JJ**

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**Criminal Appeal No.1070 of 2001**

**Appellants :**

1. Ram Kumar, S/o Kedarnath Dimer, aged about 39 years.
2. Gitaram, S/o Sudharam, aged about 41 years.
3. Bedram, son of Bahoran, aged 41 years.
4. Punitram, son of Bedram, aged 21 years.

All residents of village Mohtarai, P.S. Ratanpur, District Bilaspur (CG).

Versus

**Respondent :** State of Chhattisgarh, Through P.S. Ratanpur, Distt. Bilaspur.

**(Criminal Appeal under Section 374(2) of the Cr.P.C.)**

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Present :- Shri N.L. Soni, counsel for the appellants.
Shri Akhil Mishra, Panel Lawyer for the State.

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**J U D G M E N T**

**(Delivered on 27th August, 2007)**

**L.C. Bhadoo, J**

The accused/appellants have preferred this appeal against the judgment of conviction and order of sentence dated 27-9-2001 passed by the Additional Sessions Judge & Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Bilaspur, in Sessions Trial No.343/2000 whereby they have been held guilty under Section 302 read with Section 34 of the Indian Penal Code for committing murder of Rameshwar and each of the accused has been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for six months.

2) Case of the prosecution, in brief, is that a dispute was going on between Rameshwar (since deceased) on the one hand and Gitaram & Ram Kumar (accused/appellants) on the other hand since last 5-6 years in respect of agricultural field of Navrangkar. Appellants Gitaram & Ram Kumar are uncles of deceased Rameshwar. On 8-7-2000 at about 3.00 p.m., accused/appellant Ram Kumar along with Punitram, driver of the tractor, was seen while going towards the agricultural field with tractor. Accused/appellant Gitaram was following them on foot holding lathi in his hand. Seeing this deceased Rameshwar also followed them in order to ask them not to cultivate the field. Ahilya Bai, wife of the deceased & Sarojni, daughter of the deceased, also went towards the field. As soon as Rameshwar reached the field, Gitaram & Ram Kumar started beating him with lathi, as a result of which he fell down. Punitram was cultivating the field by tractor. On account of beating given by Ram Kumar & Gitaram, Rameshwar sustained many injuries, as a result of which he succumbed to the injuries spontaneously. Daughter of Rameshwar informed Radheshyam, brother of Rameshwar, about the incident. Ultimately, the matter was reported in Police Station Ratanpur at about 5.00 p.m. vide Ex.P/6 by Ahilya Bai, wife of the deceased. Merg intimation (Ex.P/5) was also given. After registering the case, Station House Officer, Police Station left for the scene of occurrence. After giving notice (Ex.P/7) to the Panchas, he prepared inquest (Ex.P/24) on the body of Rameshwar. The body of Rameshwar was sent to postmortem examination under Ex.P/27 to Primary Health Centre, Ratanpur, where Dr. N.K. Samdaria conducted postmortem. Postmortem report is Ex.P/1. Doctor opined that the cause of death was due to shock and hemorrhage within 24 hours because of multiple grievous homicidal injuries. Doctor also gave his opinion (Ex.P/3) regarding the weapon with which injuries can be caused to Rameshwar, in which he opined that the injuries could be caused by hard & blunt object like wheel of tractor. He further opined that injuries No.10 to 15 found on the body of the deceased could be caused with crushing by wheels of the tractor. The same are ante mortem and grievous in nature. Accused Ram Kumar while in Police custody gave memorandum (Ex.P/10) regarding the place where he kept the *Chakradhari (Kudari).* In pursuance of that one iron *Chakradhari (Kudari)* was seized under Ex.P/11. One lathi and clothes of the accused were seized under Ex.P/12. Accused Bedram gave memorandum (Ex.P/13). In pursuance of that lathi was seized under Ex.P/14. The tractor and its registration book were seized under Ex.P/15. Plain soil, blood stained soil & one green-blue lungi were also seized under Ex.P/25 from the place of occurrence. Site paln (Ex.P/28) was prepared by the Station House Officer.

One lathi was seized from Gitaram vide Ex.P/29. During the course of investigation, accused Bedram, Punitram, Ram Kumar & Gitaram were medically examined in respect of injuries, but no injury was found on their bodies. Injuries reports are Ex.P/33, Ex./P34, Ex.P/35 & Ex.P/36, respectively.

3) After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Bilaspur, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellants, the prosecution examined 13 witnesses. Statements of the accused were recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution evidence. They examined Kedarnath Sahu (DW-1) & Santram (DW-2) in their defence.

5) Learned Additional Sessions Judge/Special Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellants as aforementioned.

6) We have heard Shri N.L. Soni, learned counsel for the appellants and Shri Akhil Mishra, Panel Lawyer for the State.

7) At the outset, Shri Soni, learned counsel for the appellants, has not disputed the homicidal death of Rameshwar. Moreover, PW-2 Sarojini, daughter of the deceased, PW-3 Ahilya Bai, wife of the deceased & PW-4 Radheshyam, brother of the deceased, have categorically stated that the accused persons attacked the deceased with lathi. Their evidence is corroborated by the medical evidence of PW-1 Dr. N.K. Samdaria, who conducted postmortem on the body of deceased Rameshwar. Doctor has stated that he conducted postmortem on the body of deceased on 9-7-2000. As per his evidence, as many as 15 injuries were present on various parts of the body. Right side $7^{th}$, $8^{th}$ & $9^{th}$ ribs & left side $5^{th}$, $6^{th}$ & $7^{th}$ ribs were found fractured. Bone of the left elbow and humourous were found fractured. Tibea & Fibula of both the legs were also fractured. These injuries were inflicted by hard & blunt object. Doctor opined that the cause of death was hemorrhage and shock, as a result of multiple injuries. Postmortem report is Ex.P/1.

8) In view of the above, ocular and medical evidence it is established that death of Rameshwar was homicidal in nature. As far as involvement of the accused persons in the crime in question is concerned, Shri Soni, learned counsel for the accused/appellants argued that the witnesses are related

witnesses and from their evidence, it cannot be said that they witnessed the incident; therefore, their evidence cannot be believed. He also argued that the land in question, where the incident took place, was in the settled possession of the accused persons. The deceased went there with a lathi. When the deceased attacked the accused persons, in the right of private defence they attacked him, as such no offence is made out against the accused persons.

9) On the other hand, learned counsel for the State supported the judgment of the trial Court.

10) As far as the first argument of Shri Soni, learned counsel for the appellants, is concerned, it is settled law that the evidence of witnesses cannot be rejected merely on the ground that he or she is a relative of the deceased. Of-course the evidence of such witness is required to be scrutinized by the Court with care and circumspection in order to ascertain the truthfulness of the version of such a witness.

11) In this connection, PW-2 Sarojini, daughter of the deceased, has categorically stated that on the fateful day at about 2.00 p.m. to 2.30 p.m., she was at the residence of their neighbour and playing there. At that time, she saw that Ram Kumar, Bedram, Gitaram & Punit were going towards the field with a tractor. Thereafter she came to her house and saw that her father was also following them in order to stop them from sowing crop in the field. When they reached the field, quarrel started. She along with her mother Ahilya Bai also followed them. She saw that Gita, Kumar & Bedram had attacked her father with lathi whereas Punitram was ploughing the field with tractor. Seeing the quarrel, she immediately came to the residence and informed her uncle namely, Radheshyam (brother of the deceased). Thereafter Radheshyam went towards the field. Her mother lodged the report in Police Station. She has further stated that along with Police she went to the filed and saw the injuries on the body of her father.

12) PW-3 Ahilya Bai, wife of the deceased, has also stated that on the fateful day Punit & Kumar went to Navrang field, her husband also went towards that side in order to stop them from sowing the crop in the field. There a quarrel started between Gita & Kumar on the one hand and her husband on the other hand. Her daughter (Sarojini) informed that her father has gone to field in order to stop the accused persons, therefore, she also went towards the field and saw that Gita, Kumar & Bedram were attacking her husband with lathi. Thereafter she came and lodged the report in Police

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Station. Sarojini informed her uncle about the incident. Punitram was cultivating the field with tractor and on the other hand quarrel was going on.

13) PW-4 Radheshyam, brother of the deceased, has stated that on the fateful day he was at his residence due to his ill health. At that time, his niece Sarojini came and informed about the incident, therefore, he woke up and went towards the field. He saw that the tractor was coming out of the field and two persons were sitting on that. He was not able to identify the said persons as their faces were covered with towel. He saw Rama Rao there. He asked him not to go towards the field. Inspite of that he went towards that side and saw that Gitaram & Ram Kumar were present in the field holding lathi in their hands. Body of Rameshwar was lying there. After seeing him, Gitaram & Ram Kumar stood up and again started attacking the body of his brother with lathi. Accused persons were calling him, but on account of fear he did not go towards their side. His brother was already dead. After some time Gitaram & Ram Kumar came towards his house and asked him to come out of the house, so that they kill him also.

14) PW-5 Lakhan has turned hostile. PW-6 Rama Rao has stated that he saw Rameshwar was carrying lathi. He saw from a distance of three furlong that he was attacking with that lathi. Thereafter he saw the quarrel between Ram Kumar, Gitaram & Rameshwar. Punitram was ploughing the field with tractor. On the next day, he went to the field and saw the body of Rameshwar in injured condition.

15) PW-7 Hemantkumar Patanwar, Patwari, has stated that with regard to land in dispute, the Court decided the said issue in favour of accused Ram Kumar. The disputed land was recorded in the name of Ram Kumar. He has also stated that in fact he had seen the copy of judgment.

16) Perusal of the above evidence of the eyewitnesses namely, PW-2 Sarojini, daughter of the deceased, PW-3 Ahilya Bai, wife of the deceased, reveals that Ram Kumar, Bedram & Gitaram attacked the deceased with lathi. As far as accused Punitram is concerned, allegations against him are that he was cultivating the field with tractor and there is no iota of evidence to indicate that he in any manner participated in the attack on Rameshwar. The only evidence against him is that he was cultivating the field. There is nothing on record to show that in any manner he was sharing the common intention with accused Ram Kumar, Gitaram & Bedram for attacking Rameshwar. Even from the evidence, it has come on record that the tractor was of Amar Singh and Ram Kumar took it for the purpose of cultivating the land. The tractor was being driven by Punitram, therefore, his involvement in the crime

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in question is not established. Therefore, his conviction under Section 302 read with Section 34 of the Indian Penal Code cannot be sustained.

17) As far as the involvement of accused Bedram is concerned, close scrutiny of the evidence of PW-2 Sarojini, PW-3 Ahilya Bai and the First Information Report (Ex.P/6) lodged by Ahilya Bai show that Bedram was also not involved in the *marpeet* of Rameshwar, because in the First Information Report lodged by Ahilya Bai, it has been mentioned that accused Ram Kumar was going towards the field at about 3.00 p.m. with Punitram (driver) carrying tractor. Thereafter Gitaram also followed them carrying lathi in his hand. Her husband also followed them in order to stop them from sowing the crop in the field. Thereafter she along with her daughter Sarojini also followed them. As soon as her husband reached the field, Gitaram & Ram Kumar (uncles of the deceased) started beating him with lathi, as a result of which her husband fell down. When Ahilya Bai witnessed everything, she did not mention the name of Bedram as assailant of Rameshwar and no reason has been assigned in that respect. Even perusal of police case diary statement (Ex.D/1) of Sarojini shows that Gitaram & Ram Kumar started beating Rameshwar with lathi. Name of Bedram has not been mentioned as assailant. It has been stated that Bedram was standing there carrying lathi in his hand. No explanation has been offered why the name of Bedram has not been mentioned in the First Information Report as assailant. Therefore, involvement of Bedram in the assault cannot be believed and the prosecution has failed to establish beyond reasonable doubt regarding the involvement of Bedram in attacking Rameshwar with lathi.

18) So far as accused Ram Kumar & Gitaram are concerned, it has come on record that there was a long dispute between deceased Rameshwar on the one hand and Gita & Ram Kumar on the other hand. Both the accused persons are the uncles of the deceased. Their dispute even went to the Court. According to the evidence of PW-7 Hemantkumar Patanwar, Patwari, accused Ram Kumar succeeded in the said case and the land in question was recorded in the name of Ram Kumar. It has been mentioned in the First Information Report as well as in the case diary statement and in the Court evidence that both the persons attacked the deceased. Even number and nature of injuries also show that the attack was made by atleast two persons on the body of Rameshwar as his ribs, tibea & fibula bones were found fractured. Elbow and humourous bone were fractured. Even PW-4 Radheshyam has also stated that when his niece informed about the incident he went to the field and saw that accused Gitaram & Ram Kumar were attacking his brother with lathi. When he reached there, they asked him

to come near so that they will assault him also. Therefore, the involvement of accused Gitaram & Ram Kumar in attacking the deceased with lathi is established. Moreover, the weapons of offence were recovered at the instance of the accused persons. Doctor has stated that the lathi injuries were found on the body of deceased Rameshwar. To this extent, we do not find any illegality or infirmity in the judgment of the trial Court holding that accused Ram Kumar & Gitaram were involved in the attack of Rameshwar.

19) Now coming to the second argument raised by learned counsel for the appellants that the agricultural field, where the incident took place, was in settled possession of the accused persons. Rameshwar went with a lathi and attacked them. In fact, they attacked him in the right of private defence.

20) PW-3 Ahilya Bai, wife of the deceased, in para 9 of her evidence has admitted that the agricultural field where the incident took place was in possession of accused persons. PW-4 Radheshyam, brother of the deceased, has also admitted this fact. In para 10 of his cross-examination he has stated that the land in dispute was in the possession of accused persons. Even PW-6 Rama Rao in para 5 of his evidence has stated that there was litigation pending in the Court of Tahsildar between the deceased and the accused persons. The land in question was in the possession of accused Ram Kumar. PW-7 Hemantkumar Patanwar, Patwari, in para 3 of his evidence, has stated that there was a dispute between Ram Kumar, Gitaram & Rameshwar regarding the land in question. The case was decided in favour of Ram Kumar. Even the land was recorded in the name of Ram Kumar. He has stated that in fact he had seen the copy of the judgment. In view of the above, it is established that the land in question, where the quarrel took place, was in settled possession of the accused persons.

21) As far as the right of private defence is concerned, Section 96 of the IPC envisages that "nothing is an offence which is done in the exercise of the right of private defence". Section 97 envisages that "every person has a right, subject to the restrictions contained in section 99, to defend his own body and the property". Section 99 envisages that "there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence." Section 100 provides for the right of private defence of the body which extends to causing death. In the matters where an assault, as may

reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of assault. Section 102 provides that "the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues". Section 103 provides that "the right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely; theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised". Section 105 deals with a situation where the right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

22) In the matter of **Onkarnath Singh and others V. The State of U.P.**[1] the Apex Court held that:

> "A right of private defence given by the Penal Code is essentially one of defence or self protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in S.99 which are as important as the right itself. One of them is that the harm inflicted in self defence must be no more than is legitimately necessary for the purpose of defence. Further, the right is conterminous with the commencement and existence of a reasonable apprehension of danger to body from an attempt or a threat to commit the offence. It avails only against a danger, real, present and imminent."

23) In the matter of **Rajesh Kumar V. Dharamvir and others**[2] the Apex Court held that:

> ".....fascicle of Sections 97 to 106 thereof lays down the extent and limitation of such right. From a plain reading of the above sections it is manifest that such a right can be exercised only to repel unlawful aggression and not to retaliate. To put it differently, the right is one of defence and not of requital or reprisal. Such being the nature of right, the High Court could not have exonerated the accused persons of the charges leveled against

[1] AIR 1974 SC 1550
[2] (1997) 4 SCC 496

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> them by bestowing on them the right to *retaliate* and *attack* the complainant party.....the accused party came out in the lane and attacked the complainant party *after* the latter had damaged the outer door of their house is a proper one. The offence that was committed by the complainant party by causing such damage would amount to "mischief" within the meaning of Section 425 of the Indian Penal Code and, therefore, in view of Section 105 of the Indian Penal Code the accused would have been entitled to exercise their right of private defence of property so long as the complainant party continued in the commission of the mischief. In other words, after the damage was done, the accused had no right of private defence of property, which necessarily means that when they attacked the complainant party in the lane they were the aggressors."

24) In the matter of **State of M.P. Versus Ramesh**[3] the Apex Court held that:-

> "The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. As soon as the cause for reasonable apprehension disappears, there can be no occasion to exercise the right of private defence."

25) In the matter of **Shajahan & Ors. V. State of Kerala & Anr.**[4] the Apex Court held that:

> "The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence."

26) In the light of above legal position and law laid down by the Apex Court, if we scrutinize the evidence available on record, it is admitted position that both the parties are closely related. On the fateful day at about 3.00 p.m., accused Ram Kumar & Gitaram went to field carrying lathis and when Rameshwar went to the filed in order to ask them not to cultivate the field, the accused persons attacked him with lathi, as a result of which deceased Rameshwar sustained as many as 15 injuries on various parts of the body.

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[3] (2005) 9 SCC 705
[4] 2007 AIR SCW 2123

Out of them 6 injuries were grievous, ribs were fractured, even tibea & fibula of both the legs were fractured. Apart from that lacerated wounds were also sustained by the deceased. He was given merciless beating, as a result of which he died spontaneously. When Radheshyam, brother of the deceased went to the place of incident, accused Ram Kumar & Gitaram were standing there holding lathi and they challenged him to come near so that he can also face the same fate. As per the prosecution case, no injury was found on the body of the accused persons. Accused persons were examined by the Doctor. Injury report of Ram Kumar is Ex.P/35 & Gitaram is Ex.P/36, in which it has been mentioned that no injury was present on the bodies of these two accused persons. Therefore, from this it cannot be said that Rameshwar in any manner attacked the accused persons. He simply went there just to ask them not to cultivate the field. Section 99 of the IPC envisages that there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. The right of private defence to the property or to the body is always made available subject to the restrictions contained in Section 99 of the IPC. In the present case, Rameshwar went there to stop the accused persons from cultivating the land and in fact he entered into the field. There was time with the accused persons to go and approach the public authorities regarding the trespass made by him. Moreover, they were not entitled to beat mercilessly to Rameshwar with lathi. There was no apprehension of death or grievous injury to the accused persons as Section 100 envisages that in the matter where an assault, as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of assault in that case only the accused persons are entitled to attack the deceased. Moreover, Section 102 provides that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it is continues as long as such apprehension of danger to the body continues. In the present case, there is no evidence that in fact there was any attempt or threat to cause reasonable apprehension of danger to the body or threat to commit offence to accused persons.

27) Therefore, in the present case, no right of private defence to the extent of causing merciless beating to the deceased and causing his death was available to the accused persons and there is no question of exceeding the right of private defence. There was no apprehension of death or grievous

hurt to the accused persons. There is nothing on record to show that in any manner the deceased attempted to cause grievous injury or death to the accused persons. The deceased was all alone whereas the accused persons were two in number. Apart from that, Punitram & Bedram were also present in the field. Therefore, we do not find any substance in the argument advanced by learned counsel for the accused/appellants that the accused persons attacked the deceased in their right of private defence.

28) In the circumstances, we do not find any illegality or infirmity in the judgment of the trial Court to the extent of holding the accused Ram Kumar & Gitaram guilty for commission of offence under Section 302 read with Section 34 of the Indian Penal Code for causing death of Rameshwar.

29) In the result :-

- The appeal filed by Bedram & Punitram succeeds. Conviction & sentence imposed upon them under Section 302 read with Section 34 of the Indian Penal Code are set aside.
- Accused Punitram is on bail, therefore, his bail bonds are discharged. He need not surrender before the trial Court. As far as Bedram is concerned, he is in detention since 10-7-2000. He be set at liberty forthwith, if not required in any other case.
- The appeal in respect of accused persons namely, Ram Kumar & Gitaram fails being devoid of merit, same is liable to be dismissed and it is hereby dismissed.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Sunil Kumar Sinha**
**Judge**

Gowri